IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO 1149 of 2001
with
LETTERS PATENT APPEAL NO 1057 of 2001
with
CIVIL APPLICATION NO 6778 of 2001
in
LETTERS PATENT APPEAL NO 1057 OF 2001
in
SPECIAL CIVIL APPLICATION NO 10643 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEEPAK N CHHATRAPATI

Versus

GUJARAT STATE WAREHOUSING CORPORATION

Appearance:

1. LETTERS PATENT APPEAL No. 1149 of 2001
MR VM DHOTRE for Appellant No.
MR PJ KANABAR for Respondent No. 1-2

2. LETTERS PATENT APPEAL NO. 1057 of 2001
MR PJ KANABAR for Appellant
MR MTM HAKIM for Respondent

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 06/10/2003

ORAL COMMON JUDGEMENT
(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. All these matters are arising out of the Judgment and order dated 11.4.2001, passed by Kundan Singh, J. in Special Civil Application No.10643 of 1994, whereby the learned Single Judge dismissed the petition challenging the impugned order of dismissal dated 27.6.1994 passed by the Managing Director, Gujarat State Warehousing Corporation (for short "the Corporation"), however, partly allowed the petition to the extent of interest on the contribution made by the petitioner towards his Provident Fund from 1994 till 1999 as well as the contribution made by the respondent Corporation towards Provident Fund of the petitioner together with interest as permissible under 1971 Regulation. Later part of the Judgment and order passed by the learned Single Judge, allowing the writ petition in part, is challenged by the Appellant Corporation by way of Letters Patent Appeal No.1057 of 2001, whereas the Appellant - original petitioner challenged the part of the order passed by the learned Single Judge dismissing the writ petition challenging his dismissal order dated 27.6.1994.

2. These matters have been listed on our running Final Hearing Board dated 4.8.2003 at Sr.No.54. Endorsement made on the Board shows that they are listed for the 9th time. Today, at about 12.45 p.m. when these matters were called out, learned Counsel Shri Kanabar for the Appellant - Corporation was present, therefore, he was heard, however, neither learned Counsel Shri M.T.M. Hakim nor Shri B.M.Dhotre for the Appellant - petitioner Shri Dipak M. Chhatrapati were present. Even after recess they were not present, therefore, after hearing learned Counsel Shri Kanabar for the Appellant Corporation, all these matters are decided on merits.

3. Petitioner Dipak M. Chhatrapati joined the services of the Corporation on 1.11.1963 as Warehouseman. Later on he was designated as Warehouse Manager. He was due for retirement on 30.6.1994. However, on a serious charge of misappropriation of Rs.15,85,069/- he was placed under suspension on 19.9.1983 as it was found that

175624 bags of fertilizers amounting to Rs.15,85,069/were missing from the stock. Thereupon, Departmental Inquiry was initiated against him and the charge-sheet was submitted against him with the statement of amputation on 22.2.1983. Simultaneously criminal case was also filed against the petitioner before the Police for the offence u/s.409 I.P.Code. On the conclusion of inquiry, the Inquiry officer found that all the charges levelled against the petitioner were found to be proved, therefore, show cause notice was issued by the Disciplinary Authority against the petitioner calling upon him to show cause as to why major penalty of dismissal should not be imposed on him. He was asked to submit his explanation or reply on or before 23.6.1994 and also asked to remain personally present before the Authority on 24.6.1994 for personal hearing. However, on 23.6.1994 he submitted an Application for adjournment on the ground that he was going on official tour on 24.6.1994 and, therefore, he would not be available and he asked for further time. However, Application was rejected by the Authority on the ground that an attempt was made to linger on the proceeding as he was reaching the age of superannuation on 30.6.1994. On rejection of his Application for adjournment the petitioner did remain present on 24.6.1994 before the Authority but preferred not to file any reply or offer any explanation. Considering the facts and circumstances of the case and entire record the Disciplinary Authority came to the conclusion that charge was proved and accordingly the Authority proceeded to pass an order of dismissal from service. This was challenged by the petitioner by way of writ petition i.e. Special Civil Application No.10643 of 1994.

It may be stated that on filing criminal complaint against the petitioner, he was placed under suspension on 6.3.1981. However, the criminal case was unnecessary delayed for a long period, therefore, the Authority decided to proceed further with the departmental proceeding against the petitioner and ultimately terminated the services of the petitioner by impugned order of dismissal. During the period of suspension he was paid 75 % of salary for last 13 years though serious allegation was made against him that 17624 bags of fertilizer of the Corporation, amounting to Rs.15,84,069/- was missing. Be that as it may. Before the learned Single Judge the impugned order of dismissal was challenged on the ground that there was an inordinate delay of 13 years in deciding the Departmental Inquiry, therefore, the impugned order of dismissal is vitiated. It is true that there was a delay of 13 years in passing

the impugned order of dismissal, but the Departmental Inquiry which was initially started simultaneously with the filing of criminal case against the petitioner could not be completed because of pendency of the criminal case and when the Authority realised that the petitioner would be reaching the age of superannuation in 1994 and that criminal case was not likely to be over soon, therefore, they proceeded with the Departmental Inquiry and after giving full opportunity to the petitioner, on facts, disciplinary Authority came to the conclusion that the charges levelled against the petitioner were found to be proved. The charges were of a very serious nature, therefore, no other order than the order of dismissal was called for and accordingly it was passed. The learned Single Judge did considered all these aspects and rejected this contention regarding inordinate delay in passing the order of dismissal. In that view of the matter it cannot be said that the learned Single Judge has committed an error in rejecting this contention.

4. Another contention raised before the learned Single Judge was that after passing of the dismissal order the competent Criminal Court acquitted the petitioner in criminal case filed against him. Therefore, the impugned order of dismissal is liable to be quashed and set aside. It is true that subsequently the petitioner came to be acquitted by the criminal court, but from the order of the learned Single Judge it is clear that the charges framed against the petitioner in a criminal case and the charges levelled against the petitioner in departmental inquiry were totally different. In that view of the mater it was always open to the Authority to proceed against the petitioner by way of departmental inquiry even if the petitioner was acquitted earlier by the competent Criminal Court. At the cost of repetition we may state that before the disciplinary Authority sufficient opportunity was given to the petitioner, but he failed to satisfy the Authority though he was given an opportunity of personal hearing before passing the order of dismissal. In that view of the matter it cannot be said that the learned Single Judge wrongly rejected the second contention raised by the petitioner.

5. One more contention was raised before the learned Single Judge that the petitioner was not given full opportunity during the departmental proceeding, therefore, the order of dismissal is vitiated. This contention was rejected by the learned Single judge on the ground that fullest opportunity was afforded to the petitioner during the departmental inquiry. The

petitioner asked as many as 50 questions in cross examination of Shri B.K.Jani, who was examined in the departmental enquiry, thereafter, he requested for further time which was rightly turned down by the Inquiry officer as more than sufficient opportunity was given to the petitioner and the only intention of the petitioner was to delay the proceeding so that he can reach the age of superannuation in 1994.

6. Another contention was raised before the learned Single Judge was that the copies of the statement of the witnesses were not supplied to him and the manner in which the evidence was closed was not proper. The learned Single Judge found that contention without any substance as, according to him, sufficient opportunities were given to the petitioner which he in fact did not avail of.

7. In view of the above, we are of the considered opinion that there is no substance in L.P.A. No.1149 of 2001, filed by the appellant - original petitioner Shri Dipak N. Chhatrapati, and accordingly the same is required to be dismissed.

8. This brings us to the L.P.A. No.1057 of 2001, filed by the Appellant - Corporation against the Judgment and order passed by the learned Single Judge, partly allowing the petition on the point of interest on the contribution made by the petitioner towards his Provident Fund from 1994 till 1999 and the contribution made by the respondent Corporation towards the P.F. of the petitioner with interest as permissible under 1971 Regulation. It was vehemently contended by Shri Kanabar for the Appellant - Corporation that once the learned Single Judge came to the conclusion that there was no substance in the petition filed by the petitioner against the order of dismissal then there was no question of awarding any interest on the contribution made by the petitioner towards his Provident Fund from 1994 till 1999. He submitted that the petitioner came to be acquitted by the competent Criminal Court and as soon as they came to know about the acquittal order they deposited the contribution made by the petitioner towards his P.F. in 1998. Relying on the Supreme Court Judgment in the case of UNION OF INDIA & ANOTHER v/s. K.BALAKRISHNA NAMBIAR reported in 1998 (2) SCC 706, Shri Kanabar submitted that the learned Single Judge ought not to have awarded interest on the contribution made by the petitioner towards his Provident Fund. We find lot of force in the submission made by Shri Kanabar. It is true that the petitioner was acquitted by the competent

Criminal Court as the prosecution failed to prove its case against the accused - petitioner beyond reasonable doubt. At the same time in departmental proceeding, the Departmental Authority, after giving fullest opportunity to the petitioner, came to the conclusion that he (petitioner) misappropriated huge amount of more than Rs.15 lacs. In that view of the matter, we are of the considered opinion that no interest should have been paid to the petitioner on the contribution made by the petitioner towards his P.F. from 1994 till 1999. Similarly, there was no question of directing the Appellant - Corporation to pay its contribution towards P.F. of the petitioner together with interest when the petitioner was dismissed by the Corporation from the service and the said order of dismissal was even upheld by the learned Single Judge while dismissing the writ petition.

9. In view of the above, this L.P.A.No.1057/01, filed by the Appellant - Corporation, is required to be allowed and the Judgment and order passed by the learned Single Judge, partly allowing the writ petition i.e. Special Civil Application No.10643 of 1994, on the question of interest to be paid on the contribution made by the petitioner towards his Provident Fund from 1994 till 1999 as well as contribution of the Corporation to be paid towards Provident Fund of the petitioner together with interest as permissible under 1971 Regulation, requires to be quashed and set aside. Accordingly LPA No. 1057 of 2001 is allowed and the judgment and order passed by the learned Single Judge partly allowing Special Civil Application No.10643 of 1994 is hereby quashed and set aside. The net result is that the writ petition i.e. Special Civil Application No.10643 of 1994, filed by petitioner Shri Dipak M. Chhatrapati, is dismissed in toto. However, there shall be no order as to costs in both the Appeals.

As the main matter is disposed, no order on Civil Application No.6778 of 2001. Accordingly, Civil Application is disposed of.

(B.J. Shethna, J.)

Date : October 06, 2003

(Ravi R.Tripathi,J.)

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